U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: NOV 2 5 2008
EAC 02 240 52403

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The director originally denied the petition for abandonment, but reopened the matter following a motion in which the petitioner demonstrated the finding of abandonment to be in error. The director subsequently denied the petition on its merits. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a certified social worker who seeks employment as a grief and trauma specialist. At the time of filing, the petitioner was an assistant research scientist at New York University (NYU) and a psychotherapist at the Institute for Human Identity (IHI). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel states that the petitioner "is considered a leader in her profession and in working with victims of September 11 post traumatic stress disorder." The petitioner's initial submission consists almost entirely of background information about the petitioner's field, and witness letters. [redacted] executive director of IHI, states:

> IHI is an outpatient mental health facility serving a large variety of client problems, including anxiety, depression, and symptoms related to either past or present trauma. . . .
>
> In the last nine months since the September 11 attack on the World Trade Center, [the petitioner] . . . immediately reported to the Emergency Red Cross Center and offered her assistance. Over the days, weeks, and months that followed, she answered phones for the Red Cross during the initial crisis, provided group therapy to those people who had been in the WTC during the attack and provided individual therapy for those that were experiencing post-traumatic stress reactions to the disaster. [The petitioner] also found time to give professional support to many of her colleagues who were providing similar services by offering one-on-one supervision and informal group debriefings.

[redacted] offers little information about the beneficiary's two years at IHI prior to the 2001 attacks. Several other witnesses similarly restrict their comments to the petitioner's response to the attacks.

[redacted] a clinical social worker who worked with the petitioner after September 11, 2001, states that the petitioner worked with police officers and employees of a firm that lost over 300 of its workers in the attacks. [redacted] asserts that the petitioner's "ability to respond in crisis situations would be invaluable" in the event of "further terrorist attacks." [redacted] director of Center Mediation Services/Project Resolve, states that the petitioner is "a recognized leader in the field of dispute resolution."

NYU Professor [redacted] describes the petitioner's work at NYU:

> [The petitioner] has effectively coordinated the work of the interviewers and youth advocates, as well as training and supervising them. She has also used her outstanding clinical skills and judgment to assist the interviewers and youth advocates in responding to sensitive and difficult situations arising from some of the interviews (e.g., sexual abuse reports and instances of traumatic stress). Furthermore, she has established good rapport with the adolescents to keep them engaged with a longitudinal study.

[redacted] a visiting professor at NYU, states that the petitioner's "assistance is essential for the success of [the] project" described above, because without the petitioner's involvement, subjects would be more likely ultimately to leave the program. There is no indication that the petitioner is actually conducting this study; rather, she is helping to ensure that conditions remain conducive to the continuation of the study.

The director issued a request for evidence (RFE), instructing the petitioner to submit "objective evidence" to meet the guidelines set forth in *Matter of New York State Dept. of Transportation*. Counsel has objected to the wording of the RFE, stating that much of that wording is inapplicable because the petitioner "is not a professor or researcher in the hard sciences." In this respect, we note that the only discussion of the petitioner's future work (apart from speculation about future terrorist attacks) concerns her ongoing involvement in an NYU research project.

Counsel asserts that the petitioner's "talents are remarkable" and that she has established eligibility for the national interest waiver. Apart from counsel's remarks, the petitioner's response consists entirely of witness letters. Numerous individuals who have worked with the petitioner describe her dedication to her work and her talent in assisting individuals traumatized by everything from war and terrorism to the Holocaust. All of these witnesses have personally worked with the petitioner in various capacities, and their letters do not show that the petitioner's work has had a significant impact beyond the local level. Some witnesses, such as Professor [redacted] of the State University of New York at New Paltz, go into greater detail about the types of calls that the petitioner handled immediately after the September 11 attacks.

[redacted] clinical director of Police Organization Providing Peer Assistance (POPPA) Inc., states that he "interviewed and hired [the petitioner] as part of an outreach team in 2003" to work with "NYPD Emergency Worker survivors from the World Trade Center Disaster." The work that [redacted] describes is local in nature, limited to police officers in New York City.

The director denied the petition, stating:

> While the Service does not wish to deny the importance of your work, it does not appear to have had a national impact or have the potential to have such a far reaching impact on the country. You do not appear to have published research that has altered the procedures of the majority of your colleagues or invented a new method of dealing with such survivors/victims of a tragedy of such a magnitude that has been accepted by others in the field.

On appeal, counsel states that the petitioner "became an integral and leading health care professional" "immediately after the World Trade Center collapsed." Counsel does not define "leading"; the record indicates that the petitioner has generally worked under the supervision of local-level officials.

Counsel asserts: "The response to the RFE focused on the concept that the [petitioner] . . . was, in essence, creating new methods of treatment and techniques of treatment for the families of victims of horrendous tragedies. Additional letters were submitted which clearly focused on this issue." Counsel does not elaborate. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The letters submitted in response to the RFE do not identify or describe any "new methods" or "techniques" that the petitioner created, before or after the September 11 attacks. The witnesses indicate only that the petitioner, by working with survivors from major disasters, has gained expertise that cannot be taught in a classroom.

In a letter dated February 7, 2005, [redacted] of POPPA states: "We need her continued present [sic] with NYPD as the stresses affecting the police are ever present. This regrettably will become ever more important to the nation as soldiers return from their tour of duty in Iraq."

Accompanying [redacted] letter is background documentation regarding post-traumatic stress disorder among soldiers returning home from the war in Iraq that began in the spring of 2003. This material speaks to the intrinsic merit of the petitioner's profession. The director, in denying the petition, never contested the merit of the petitioner's field. It remains that being a social worker with expertise in trauma is not *prima facie* grounds for approval of a national interest waiver, whether or not that social worker was in New York in late 2001.

The petitioner had filed the appeal on May 25, 2005, at which time there was no indication that any further submission would be forthcoming. In a subsequent letter, dated August 29, 2005, [redacted] executive director of POPPA, states:

> [The petitioner] has played a central and irreplaceable role in developing and implementing a groundbreaking, confidential treatment model for the effects of acute stress disorder and PTSD among New York City police officers. . . .
>
> The POPPA model is unique because [of] its success in engaging difficult-to-reach first responders and military personnel in much-needed mental health services. . . .

> To meet this growing need, in the last several months [the petitioner] has begun working with four other states – Florida, California, Hawaii and Alaska – to incorporate the POPPA program into their emergency services. She is also working closely with the U.S. Marine Corps at Camp Lejeune which is enthusiastic about adopting our methodology.
>
> Because [the petitioner] is spearheading the national replication of POPPA, her work is indisputably of national significance.

The petitioner filed the petition on July 10, 2002, and therefore the petitioner must establish that she qualified for the benefit sought as of that date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). The petitioner did not even begin working for POPPA until 2003, several months after she had filed the petition. Early letters from POPPA focused on the petitioner's local work with local police officers. Only the most recent letter from POPPA – dated more than three years after the filing of the petition, and three months after the filing of the appeal (despite counsel's failure to state good cause for the delay as required by 8 C.F.R. § 103.3(a)(2)(vii)) – makes any mention of a national model. The petitioner's wider work is said to have "begun" during "the last several months." Even if the record contained documentation of the wider implementation of the POPPA model (which it does not), it is obvious that this implementation did not begin until years after the filing date. Pursuant to *Matter of Katigbak*, an employment-based immigrant visa petition cannot be filed on behalf of a not-yet-eligible alien, on the expectation that the alien will eventually become eligible due to subsequent developments. Material changes to a petition that has already been filed cannot make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm. 1998). The petitioner is not, and cannot be, entitled to a 2002 priority date based on a 2005 project undertaken for an entity that did not employ her until 2003.

Considering that POPPA officials assert their intention to continue employing the petitioner, it would appear that a job offer from POPPA could form the basis of an application for labor certification. A new petition, unlike the present proceeding, could properly take into account the petitioner's activities after July 2002.

Counsel protests that the director has made contradictory findings regarding whether the petitioner's work is national in scope. Individual counseling is not national in scope, whether the individuals being counseled are troubled adolescents or police officers in the aftermath of a major calamity. While the work of counselors like the petitioner is nationally important in the aggregate, the work of individual counselors is inherently local in nature and limited to the individuals receiving counseling, regardless of the nature of the traumatic event that necessitates such counseling. The coordination of a national program, or the development of a nationally-implemented model, would have national scope, but there is no evidence that the petitioner was engaged in such activities as of the July 2002 filing date, and only one person's uncorroborated statements to show that she was doing so three years later. Any potential future filing based on this work would have to be supported not only by witness letters, but by specific, objective, documentary evidence establishing the nature of the petitioner's involvement with the model and the extent of its implementation.

Congress has, to date, established no blanket waiver for social workers or grief counselors, and therefore the argument that such professionals serve, collectively, a national purpose is not grounds for approving a waiver

for the petitioner on the basis of her choice of career. Congress created a blanket waiver for certain physicians at section 203(b)(2)(B)(ii) of the Act. This blanket waiver does not apply in this instance, but its existence serves to prove that blanket waivers are not implied by the remainder of the statute; if they were, section 203(b)(2)(B)(ii) would be redundant. The existence of this blanket waiver also demonstrates that Congress could have created a similar blanket waiver for social workers, but did not choose to do so. General arguments about the overall importance of social workers, and observations about the horrific circumstances in New York in the days and months after September 11, 2001, cannot attribute national significance to the work of one particular social worker out of many who were active in that area at that time. Whatever else the petitioner may or may not have achieved after July 2002, such activities cannot retroactively demonstrate that the petitioner was already entitled to a waiver as of July 2002.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.